IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NORTH CAROLINA

ELIZABETH CITY DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. SOUTHERLY PORTION OF BODIE ISLAND, NAGS HEAD TOWNSHIP, DARE COUNTY, STATE OF NORTH CAROLINA, AND W. A. WORTH, ET AL, AND UNKNOWN OTHERS, Defendants.	CIVIL ACTION NO. 262 TRACT NO. 12 ORDER

THIS CAUSE Coming on to be heard and being heard on the 19th day of August, 1954, before His Honor, Don Gilliam, United States Distric Judge for the Eastern District of North Carolina, at Raleigh in said District, on the Motion of W. A. Worth and wife, Ethel E. Worth, and

Oregon Inlet, Inc., for the appointment of Commissioners to determine the issue of compensation pursuant to Rule 71A(h) of the Rules of Civil Procedure, and upon consideration of said Motion, the evidence, and argument of counsel, the Court finds:

I.

That the lands of the movants sought to be condemned in this action comprise more than 1800 acres, the movants contending that the exact acreage is 1857.98 acres, situate in Dare County, North Carolina, and bounded on one side by the Atlantic Ocean and on another side by Roanoke Sound. Located on said land are artifically constructed duck ponds embracing about 300 acres connected with the Sound by a canal, so constructed that the depth of the water in the ponds is controlled by flood gates. The said duck ponds have been used and the movants will contend that they have been and are useful and valuable as hunting areas for wild fowl. At and near Oregon Inlet on said lands, there is located an artificially constructed boat basin providing space for the docking of small boats used for pleasure and by commercial and non-commercial fishermen and hunters. Near said boat basin, there is located a store and storerooms, and gasoline filling stations, all of which were leased, at the time of the institution of this action, to Oregon Inlet, Inc., which was engaged in the conduct and operation of a mercantile business, gasoline filling stations, and the sale of services and supplies for non-commercial fishing and hunting. The movants will contend that the petitioner took possession of the premises occupied by Oregon Inlet, Inc., thereby forcing it to dispose of its stock of merchandise and equipment at a substantial financial loss for which they are entitled to compensation. Located on said lands is a large residence which has been used and is useful as a summer cottage and also a lodge for hunters and fishermen.

to which access is had by water and by overland road connecting with the State Highway running through the movants' lands. The movants' land has a frontage on the Atlantic Ocean of approximately three miles and a hard surface State Highway extends through said lands generally parallelling the ocean frontage so that the land between the ocean and said highway varies in depth from approximately 1000 feet to approximately 1500 feet. The movants contend that much of said land lying between the Atlantic Ocean and said State Highway, as well as much of it lying west of said highway, is suitable for residential and business purposes, the lots varying in size and value, and, in determining the compensation to be paid for said lands, it is necessary that evidence be offered with respect to the topography of said land and the determination of what parts thereof are so located as to be available for residential and other beach resort purposes. That all of said lands high enough above the water to be available and suitable for beach resort purposes is not contiguous but separated by water and other natural conditions into several areas. All of the movants' land is located to the south of the beach resort commonly known as Nags Head and in such proximity that evidence of the value of the movants' land will be offered to show its adaptability and usefulness for beach resort purposes and its subdivision, development, and marketability for such purposes.

II.

The movants claim that their lands contain a valuable mineral known as ilmenite and that it is present in commercial quantities; that it will be necessary for them to use expert witnesses to testify as to the presence of said mineral in commercial quantities and to other facts with respect to practical and economical mining of said mineral and other scientific facts affecting the extent to which

the presence of said mineral affects the value of the movants' lands, and it is expensive to secure the attendance of such witnesses, which expense will be greatly increased by requiring their attendance upon a jury trial at Elizabeth City.

III.

The movants also contend that over a long period of years, by the operation of the tides and winds, they have acquired substantial acreage of land at the southern end of their lands bordering on Oregon Inlet and that said process of accretion is continuing to operate and is a factor to be considered in determining the compensation to which they will be entitled, and such facts must be shown by witnesses who live in the immediate area and can testify of their own knowledge and observation.

IV.

The Court finds that the lands of the movants are located approximately 70 miles from Elizabeth City, [illegible] quotank County, North Carolina, where the Court customarily sits and would sit for the trial of this action; that there is no means of public transportation between said Elizabeth City and said lands except by private motor vehicles and infrequent schedules of motor buses; that in the trial of the issue of just compensation in this case, many of the witnesses, other than the experts previously referred to, will be residents of the general locality of movants' lands and that to require the attendance of such witnesses upon the Court sitting at Elizabeth City would be both inconvenient and expensive to them and to the parties, whereas if Commissioners are appointed they can conduct their hearings in the vicinity of said lands and thereby greatly promote the convenience of many witnesses.

V.

Because of the location of said lands, the size of the area involved, and the varying topography, and the contentions that said lands are useful for the many different purposes heretofore enumerated, the Court concludes that it may be reasonably anticipated that a view of said lands should be had by a jury or commissioners and in such event it would be necessary for the jury or commissioners to visit parts of said land by motor vehicle and parts by water transportation, and, manifestly, it will be easier, more practical and less expensive for three commissioners to view said lands than for a jury to do so.

VI.

The Court further finds that from the representations made by the petitioners and the respondents, the trial of the issue of just compensation will consume several days time for the reception of the testimony of witnesses and other evidence to be offered by the parties, and the Court concludes that the taking of said testimony and evidence by commissioners on the premises and at nearby points will not only be convenient to the parties, their witnesses, and their counsel, but will result in reducing the costs of the hearing as well as the time consumed, and will expedite the final determination of the issues involved.

VII.

Because of the character, location, and quantity of the property of the respondents sought to be condemned in this case, and because of the other reasons set forth in these findings, the Court, in the exercise of its discretion, determines that it is in the interest of justice that the issues of compensation shall be determined by a Commission of three persons to be appointed by the Court.

IT IS, THEREFORE, CONSIDERED, ORDERED, AND ADJUDGED That the issues of compensation to be paid by the petitioner to the movants, W. A. Worth and wife, Ethel E. Worth, and Oregon Inlet, Inc., shall be determined by a Commission of three persons to be appointed by the Court by Order to be entered herein.

Entered at Raleigh, North Carolina, this the 19th day of August, 1954.

(s) Don Gilliam

United States District Judge